IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 365 of 2006 (S/B)

Smt Saroj Srivastava
Widow of Late Shyam Swaroop Srivastava
R/o Village and Post Barethi,
Tehsil Handia,
District – Allahabad ….. Petitioner

Versus

1. State of Uttaranchal
   through the Principal Secretary
   Department of Uttaranchal
   Peyajal Sansadhan Vikas Evam Nirman Nigam,
   Dehradun
2. The Managing Director
   Uttaranchal Peyajal Sansadhan
   Vikas Evam Niram Nigam,
   Head Officer, 11 Mohani Road, Dehradun
3. The Director of Finance,
   Uttaranchal Peyajal Sansadhan Vikas
   Evam Nirman Nigam,
   Head Officer, 11 Mohani Road, Dehradun
4. The Executive Engineer,
   Project Division Chamba
   Uttaranchal Peyajal Sansadhan Vikas Evam
   Nirman Nigam, Chamba
   (Tehri Garwal) ……..Respondent

Sri Sushil Kumar Srivastava, Advocate for the petitioner
Sri N.B. Tiwari, Addl. Advocate General with Sri N.C. Gupta, Standing Counsel for respondent no. 1.
Sri D.S. Patni, Advocate for respondents 2 to 4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C. S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri Sushil Kumar Srivastava, Advocate for the petitioner

Sri N.B. Tiwari, Addl. Advocate General / Chief Standing Counsel with Sri N.C. Gupta, Standing Counsel for respondent no. 1.

Sri D.S. Patni, Advocate for respondents 2 to 4.

They are heard on admission.

2. Petitioner Saroj Srivastava has filed this writ petition for the following reliefs:

> "(a) A writ, order or direction in the nature of certiorari by quashing that part of the impugned letter /order dated 29.11.2006 of respondent no.2 as received to the petitioner under registered post on 04.12.2006 (Annexure 7 to the writ petition) to the extent only it directs to the petitioner by compelling her to produce the succession certificate thereby keeping the release of pensionary benefits pending.
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> (b) A writ, order or direction in the nature of writ mandamus commanding the respondent nos. 2 and 3 to release the entire retrial benefits payable to late Shyam Swaroop Srivastava alongwith 18% interest per annum from the date when it falls due with other and further dues and emoluments which were /are payable to him, to the petitioner.
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> (c) A writ, order or direction in the nature of writ of mandamus commanding the respondent no. 2 and 3 to fix and pay the family pension to the petitioner with effect from the date it falls due i.e. immediately after the date of death of the husband of the petitioner.
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> (d) Any other writ, order or direction which this Hon'ble Court deem fit and proper under the facts and circumstances of the case, and,
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> (e) To award the cost of this writ petition to the petitioner from the contesting respondents."

3. Petitioner Smt. Saroj Srivastava, claiming herself as the legally wedded wife of Late Shyam Swaroop Srivastava, claimed family pension and his other retiral benefits.

4. One Madhubala Srivastava, also claiming herself to be legally wedded wife of Shyam Swaroop Srivastava, came forward and lodged her rival claim for family pension and retrial benefits of Shyam Swaroop Srivastava.

5. The authorities, faced with the above situation and finding that late Shyam Swaroop Srivastava nominated petitioner Saroj Srivastava declaring her as his wife, in some service papers, had also nominated Madhubala Srivastava in his 'group insurance papers' and pension

papers' as his wife. directed petitioner Saroj Srivastava and Madhubala Srivastava to get succession certificate from competent Civil Court for getting the family pension and retrial benefits of late Shyam Swaroop Srivastava. This direction by the authorities to the petitioner has led to the filing of the present writ petition for the above mentioned reliefs.

6. True, pension, family pension and retrial benefits matters should be finalised by the authorities at the earliest and without any delay, barring those matters where serious dispute is raised, as in the present case, about the person who is entitled to receive family pension and retrial benefits. As such, no fault can be found with the direction by the authorities to the petitioner and Madhubala Srivastava to get succession certificate from a competent Civil Court.

7. Without a declaration in her favour that she is legally wedded wife of late Shyam Swaroop Srivastava, the reliefs sought by the petitioner in the writ petition cannot be granted. Such a declaration will necessarily require leading of evidence by the parties for deciding this seriously disputed question of fact. Such a course obviously is not permissible in the proceedings under Article 226 of the Constitution of India.

8. In this view of the matter, we decline to exercise our jurisdiction under Article 226 of the Constitution of India.

9. The writ petition, therefore, fails and is hereby dismissed summarily.

10. Consequently, CLMA No. 14893 of 2006 also stands dismissed.

(J.C.S. Rawat, J.) 12.12.2006

(Rajeev Gupta, J.) 12.12.2006

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